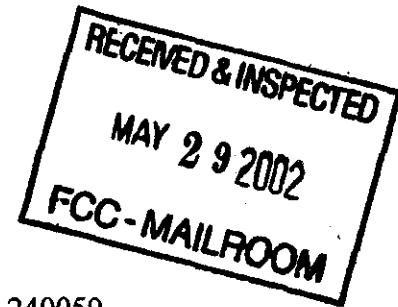


Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of)	
)	
Request for Waiver by)	
)	
Lane Education Service District)	File No. SLD-240059
Eugene, Oregon)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Associations, Inc.)	

ORDER

Adopted: May 22, 2002

Released: May 23, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Waiver Request filed by Lane Education Service District (Lane), Eugene, Oregon, seeking a waiver of the Commission's rules governing the schools and libraries universal service support mechanism.¹ Lane requests a waiver of the filing deadline for Funding Year 4.² For the reasons set forth below, we deny Lane's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Administrator a completed FCC Form 470.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must submit a "completed FCC Form 471" application to the Administrator.⁵ The Commission's rules require that the applicant file a

¹ Letter from Randy Trummer, Lane Education Service District, to Federal Communications Commission, filed August 17, 2001 (Waiver Request).

² See Waiver Request. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (Administrator) may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.501–54.503.

⁴ 47 C.F.R. § 54.504(b).

⁵ 47 C.F.R. § 54.504(c).

completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for in-window applicants.⁶ The last day of the filing window for Funding Year 4 was January 18, 2001.⁷ Applications, whether filed electronically or manually, had to be submitted or postmarked by that date.⁸ This requirement applied to the Block 6 certification pages and Item 21 attachments as well.⁹

3. We find that Lane did not file a completed FCC Form 471 for this application. Although Lane input part of its FCC Form 471 online, it did not complete or submit its form by January 18, 2001.¹⁰ SLD's records do not include a Block 6 certification page or any Item 21 attachments were submitted for this application.¹¹ Lane, however, claims that it missed the filing deadline by one day.¹² Lane states that it sent its FCC Form 471 with a delivery company on January 19, 2001.¹³ However, Lane does not offer any evidence that the completed application was ever submitted.

4. Lane admits that it missed the in-window deadline, but attributes the delay to changes in staffing, including the departure of an employee responsible for such filings.¹⁴ Lane also notes that it will suffer significant financial loss if its request is not approved.¹⁵ Lane, therefore, requests a waiver of the filing deadline from the Commission, as SLD can not give a waiver of the Commission's rules.¹⁶

5. Lane's Waiver Request can be granted only if waiving the deadline is supported by a showing of good cause.¹⁷ A deviation from a general rule is not permitted unless special circumstances warrant it and the deviation would better serve the public interest than strict adherence to the general rule.¹⁸ SLD reviews and processes thousands of applications each year, and therefore it is administratively necessary to place on the applicant responsibility for

⁶ 47 C.F.R. §§ 54.504(c), 54.507(g).

⁷ SLD website, What's New (November 2, 2000)
<<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>.

⁸ See *id.*

⁹ See *id.*

¹⁰ See FCC Form 471, Lane Education Service District, Eugene, Oregon, initiated January 12, 2001 (Lane Form 471). As recently as January of 2002, SLD's records show that Lane still had not completed or electronically submitted that online form.

¹¹ *Id.*

¹² See Waiver Request.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*; see also Letter from Schools and Libraries Division, Universal Service Administrative Company, to Randy Trummer, Lane Education Service District, dated August 6, 2001 (Administrator's Decision on Waiver Request).

¹⁷ See 47 C.F.R. § 1.3.

¹⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (appeals court vacating a Commission decision to grant a waiver in a licensing issue, because it was arbitrary and capricious).

complying with the program's rules and procedures.¹⁹ Timely submissions are needed because, under the funding mechanism, all requests for funding received within the initial filing deadline must be considered together pursuant to the funding priorities for in-window applicants.²⁰

6. We have traditionally held applicants to a high standard for waivers, noting that ultimately it is the applicant who has responsibility for the timely submission of its application if the applicant wishes to be considered with other in-window applicants.²¹ How the applicant delegates responsibility for the applications is not relevant to our analysis. We have held that employee error does not relieve applicants of their responsibility to understand and comply with the program's rules and procedures.²² Therefore, Lane's changes in staffing do not constitute special circumstances for purposes of our waiver standard. Furthermore, the assertion that a denial of an application may have a detrimental impact on a particular school or library does not create the special circumstances that warrant waiver of the Commission's rules.²³ Therefore, we conclude that Lane has not demonstrated the existence of any special circumstances warranting a waiver of the filing deadline, and we deny its Waiver Request.

¹⁹ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, para. 8 (Com. Car. Bur. 2000).

²⁰ See 47 C.F.R. § 54.507(g).

²¹ See *Request for Review by Dermott Special School District, Hoven School District No. 53-2, Mastics-Moriches-Shirley Community Library, Mounds Public Schools, Reading-Muhlenberg Area Vocational-Technical School, Versailles Exempted Village Schools, Westbrook School Department, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-252777, SLD-261808, SLD-277850, SLD-265880, SLD-257325, SLD-270374, SLD-220712, CC Docket Nos. 96-45 and 97-21, Order, DA 02-643 (Com. Car. Bur. rel. March 19, 2001).

²² *Id.* para. 4.

²³ See *Request for Review by Northern Waters Library Service, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-183124, CC Docket Nos. 96-45 and 97-21, Order, DA 02-227 (Com. Car. Bur. rel. Jan. 30, 2002) (denying a request for waiver of the Commission's rules based on the assertion that denial would cause the applicant hardship); *Request for Review by Lansingburgh Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-109845, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 6999 (Com. Car. Bur. 1999) ("To simply advert...to its limited resources and the needs of its students, does not distinguish its situation from other applications the SLD must process each funding year in accordance with its filing deadlines.").

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by Lane Education Service District, Eugene Oregon, on August 17, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau